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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DAVID M. CATHCART, JAMES H.
WHITEHEAD, ROBERT W. DECKER,
DALE BALDISSERI, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

SARA LEE CORPORATION, SARA
LEE BAKERY GROUP,
EARTHGRAINS BAKING
COMPANIES, INC. (formerly sued as
DOE 1) and DOES 2 through 20,

Defendants.

Case No. CV 09-5748 MMC

**~~[PROPOSED]~~ ORDER (1)
CONFIRMING CERTIFICATION
OF CLASS AND COLLECTIVE
ACTION FOR SETTLEMENT
PURPOSES; (2) GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; AND (3)
ENTERING FINAL JUDGMENT**

1 On December 14, 2012, this matter came on for hearing upon the Plaintiffs' unopposed
2 motion for final approval of the settlement in this action. Due and adequate notice having been
3 given to the Settlement Class (as defined below), and the Court having considered all papers
4 filed and proceedings had herein and all oral and written comments received regarding the
5 proposed settlement, and having reviewed the record in the above captioned matter, and good
6 cause appearing,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- 8 a. The Court has jurisdiction over the subject matter of the above-captioned
9 action, the Class Representatives, Defendants Sara Lee Corporation, Sara
10 Lee Bakery Group, and Earthgrains Baking Companies, Inc.
11 ("Defendants") and all members of the Settlement Class, which consists of
12 all individuals employed by Defendant Earthgrains Baking Companies,
13 Inc. ("Earthgrains") or alleged to be employed by the other Defendants in
14 the position of "Route Sales Representative or" "Driver Salesman" – as
15 defined in the two collective bargaining agreements that have been
16 addressed in this action – for at least one day between December 8, 2005
17 and August 10, 2012, the entry date of the Preliminary Approval Order
18 (collectively the "Settlement Classes" or "Settlement Class Members").
- 19 b. The term Stipulation shall refer to the Joint Stipulation of Class Settlement
20 and Release filed by the parties in this case in connection with their
21 application for preliminary approval and final approval of this matter, and
22 all terms herein shall have the same meaning as terms defined in the
23 Stipulation, unless specifically provided herein.
- 24 c. The Court grants final approval of the parties' Settlement on the terms set
25 forth in the Stipulation.
- 26 d. The Court finds that the distribution by first-class mail of the Notice of (1)
27 Proposed Class Settlement and (2) Final Settlement Approval Hearing
28 ("Class Notice") and Claim Form constituted the best notice practicable

1 under the circumstances to all persons within the definition of the
2 Settlement Class and fully met the requirements of due process under the
3 United States Constitution and applicable state law. Based on evidence
4 and other material submitted in conjunction with the Final Settlement
5 Approval Hearing, the actual notice to the Settlement Class was adequate
6 and ample efforts were made to contact Settlement Class members to
7 allow them to participate. These papers informed Class Members of the
8 terms of the Settlement, their right to claim a share of the settlement
9 proceeds, their right to object to the Settlement, or to elect not to
10 participate in the Settlement and pursue their own remedies, and their right
11 to appear in person or by counsel at the Final Settlement Approval
12 Hearing and be heard regarding approval of the Settlement. Adequate
13 periods of time were provided by each of these procedures. No Settlement
14 Class Members objected to the Settlement, and only two (2) individuals
15 opted out of the Settlement.

16 e. The Court finds, for purposes of settlement only, that the Class satisfies
17 the applicable standards for certification under Federal Rules 23(a) and
18 23(b)(3). Accordingly, solely for purposes of effectuating this settlement,
19 this Court has certified a class of all Settlement Class Members, as that
20 term is defined above. Because the Rule 23 class is being certified here
21 for settlement purposes only, the Court need not (and does not) address the
22 manageability requirement of Rule 23(b)(3). *See Amchem Products, Inc.*
23 *v. Windsor*, 521 U.S. 591 (1997).

24 f. The Court finds, for settlement purposes only, that the Settlement Class
25 Members meet the requirements for collective action certification under
26 Section 216(b) of the Fair Labor Standards Act.

27 g. The Court approves the settlement of the above-captioned action, and each
28 of the releases and other terms set forth in the Stipulation, as fair, just,

1 reasonable and adequate as to the Settlement Class, the Class
2 Representatives, and Defendants (collectively “Settling Parties”). The
3 Settling Parties and the Settlement Administrator are directed to perform
4 in accordance with the terms set forth in the Stipulation.

5 h. Except as to any individual claim of those persons who have validly and
6 timely requested exclusion from the Class, namely:

7 1) A. Valerio associated with Employee ID No. 90009031; and

8 2) M. Hugais associated with Employee ID No. 90031063,

9 all of the claims asserted in the above-captioned matter are dismissed with
10 prejudice as to the Class Representatives and the Settlement Class
11 Members. The Settling Parties are to bear their own attorneys’ fees and
12 costs, except as otherwise provided in the Stipulation.

13 i. By this Judgment, each Class Representative shall be deemed to have, and
14 by operation of the Judgment shall have, fully, finally, and forever
15 released and discharged Defendants and their past, present and future
16 parents, subsidiaries (whether or not wholly-owned), joint ventures,
17 affiliates (including each such affiliate’s past, present and future parents,
18 subsidiaries and joint ventures), divisions and subdivisions, and each of
19 such entities’ current and former officers, directors, employees, partners,
20 shareholders, agents, insurers, successors, assigns, and legal
21 representatives, all in their individual and corporate capacities,
22 (collectively the “Released Parties”) from any and all claims, obligations,
23 causes of action, actions, demands, rights, and liabilities of every kind,
24 nature and description, whether known or unknown, whether anticipated
25 or unanticipated, arising prior to the date that this Order becomes Final,
26 including, but not limited to, those which: (a) were pled in the Action;
27 and/or or (b) could have been pled and which are based on any of the
28 following: (i) alleged failure to pay any type of overtime wages, (ii)

1 alleged failure to pay minimum wages, (iii) alleged failure to provide meal
2 periods, (iv) alleged failure to provide itemized or accurate wage
3 statements, (v) alleged failure to timely pay wages due, before or after the
4 end of employment, (vi) any statutory, constitutional, regulatory,
5 contractual or common law claims for wages, damages, litigation costs,
6 unfair business practices, unfair competition (including, without
7 limitation, claims arising under California Bus. & Prof. Code sections
8 17200 *et seq.*); and (c) this release includes any and all of the following
9 based on any of the matters released by the foregoing: penalties (including
10 those arising under PAGA), liquidated damages, punitive damages,
11 interest, attorneys' fees, litigation costs, restitution, and equitable relief
12 (collectively "Class Representatives' Released Claims").

13 j. By this Judgment, each Settlement Class Member who has not validly and
14 timely requested exclusion from the Settlement by opting out (including
15 the Class Representatives and Claimants), shall be deemed to have, and by
16 operation of the Judgment shall have, fully, finally, and forever released
17 and discharged the Released Parties from any and all claims, obligations,
18 causes of action, actions, demands, rights, and liabilities of every kind,
19 nature and description, whether known or unknown, whether anticipated
20 or unanticipated, arising prior to the deadline to opt-out of the settlement
21 as stated in the Class Notice or October 31, 2012, whichever occurs first,
22 which arise under state or local or regulation and: (a) were pled in the
23 Action; and/or or (b) could have been pled and which are based on any of
24 the following: (i) alleged failure to pay any type of overtime wages, (ii)
25 alleged failure to pay minimum wages, (iii) alleged failure to provide meal
26 periods, (iv) alleged failure to provide itemized or accurate wage
27 statements, (v) alleged failure to timely pay wages due, before or after the
28 end of employment, (vi) any statutory, constitutional, regulatory,

1 contractual or common law claims for wages, damages, litigation costs,
 2 unfair business practices, unfair competition (including, without
 3 limitation, claims arising under California Bus. & Prof. Code sections
 4 17200 *et seq.*); and (c) this release includes any and all of the following
 5 based on any of the matters released by the foregoing (a) and (b) above:
 6 penalties (including those arising under PAGA), liquidated damages,
 7 punitive damages, interest, attorneys' fees, litigation costs, restitution, and
 8 equitable relief (collectively "Participating Class Members' Released
 9 Claims").

10 k. By this Judgment, each and every Claimant (including the Class
 11 Representatives) shall be deemed to have, and by operation of the
 12 Judgment shall have, also fully, finally, and forever released and
 13 discharged the Released Parties from (in addition to the Participating Class
 14 Members' Released Claims) any and all claims, obligations, causes of
 15 action, actions, demands, rights, and liabilities, whether known or
 16 unknown, whether anticipated or unanticipated, arising prior to the date
 17 the Claimant signs his or her Claim Form that were asserted or could have
 18 been asserted in the action pursuant to the FLSA based any of the
 19 following: (i) alleged failure to pay wages, (ii) alleged failure to pay
 20 overtime wages, (iii) alleged failure to pay straight time wages, (iv)
 21 alleged failure to pay minimum wages, (v) meal periods, (vi) premium pay
 22 for meal periods and this release includes any and all of the following
 23 based on any of the matters provided for above in this paragraph:
 24 penalties, liquidated damages, punitive damages, interest, attorneys' fees,
 25 litigation costs, restitution, and equitable relief ("Claimants' Released
 26 Claims").

27 l. By this Judgment, Class Counsel hereby releases all claims, causes of
 28 action, demands, damages, costs, rights, and liabilities of every nature and

1 description for attorneys' fees, costs, and expenses against the Defendants
2 and Released Parties arising on or before the date that the Final Approval
3 Order becomes Final ("Class Counsel's Released Claims").

4 m. Neither the Stipulation nor the Settlement contained therein, nor any act
5 performed or document executed pursuant to or in furtherance of the
6 Stipulation or the Settlement: (i) is or may be deemed to be or may be
7 used as an admission of, or evidence of, the validity of any of the released
8 claims described above, any wrongdoing or liability of Defendants or any
9 of the Released Parties, or whether class or collective action certification
10 is warranted in this action or any other proceeding or that decertification is
11 not warranted in this action or any other proceeding; or (ii) is or may be
12 deemed to be or may be used as an admission of, or evidence of, any fault
13 or omission of Defendants or any of the Released Parties in any civil,
14 criminal or administrative proceeding in any court, administrative agency
15 or other tribunal. Defendants may file the Judgment from the above-
16 captioned matter in any other action that may be brought against them in
17 order to support a defense or counterclaim based on principles of *res*
18 *judicata*, collateral estoppel, release, good faith settlement, judgment bar
19 or reduction or any theory of claim preclusion or issue preclusion or
20 similar defense or counterclaim.

21 n. The Action is dismissed on the merits and with prejudice, permanently
22 barring the Class Representatives and Settlement Class Members (other
23 than those who timely filed valid written requests for exclusion from the
24 Class) from prosecuting any of the Participating Class Members' Released
25 Claims, also permanently barring the Class Representatives and Claimants
26 from prosecuting any of the Claimants' Released Claims, also
27 permanently barring the Class Representatives from prosecuting any of the
28 Class Representatives' Released Claims, and also permanently barring

1 Class Counsel from prosecuting any of the Class Counsel's Released
2 Claims.

3 o. The Court hereby orders the appointment of David M. Cathcart, James H.
4 Whitehead, and Dale Baldisseri as Class Representatives for the
5 Settlement Class for purposes of the Settlement. The Court is informed
6 that named-plaintiff Robert W. Decker passed away on October 21, 2012,
7 after preliminary approval, but prior to final approval of the Settlement.
8 The Court hereby orders the appointment of Ira Spiro and Jennifer Connor
9 of Spiro Moore LLP and Joseph Gigliotti of Gigliotti & Gigliotti LLP as
10 Class Counsel for the Settlement Class for purposes of Settlement and the
11 releases and other obligations therein.

12 p. The Court finds that the plan of allocation set forth in the Stipulation is
13 fair and reasonable and that distribution of the Settlement Fund to
14 Claimants, Class Counsel and Class Representatives shall be done in
15 accordance with the terms outlined in the Class Notice and Stipulation.
16 Pursuant to the Class Notice and Stipulation, Defendant Earthgrains
17 Baking Companies, Inc. ("Earthgrains") shall pay One Million Two
18 Hundred Fifty Thousand Dollars and No Cents (\$1,250,000.00) to fund a
19 Qualified Settlement Fund. Other than Earthgrains' payment to the
20 Qualified Settlement Fund, Defendants shall not be required to make any
21 payments in connection with the Settlement. The following payments
22 shall be paid out of the Qualified Settlement Fund: (i) Class Counsel's
23 attorneys' fees and costs in this matter; (ii) payment of reasonable fees to
24 the Settlement Administrator for its services; (iii) a payment of \$3,000 to
25 the Labor Workforce Development Agency ("LWDA"); (iv) Earthgrains'
26 share of payroll taxes on the Settlement Payments (paid from any
27 reversion to Earthgrains); and (v) enhancement payments to the Class
28 Representatives. The Court finds that these payments are fair and

1 reasonable. Accordingly, the Court hereby awards to Class Counsel for
2 attorneys' fees of \$312,500 and costs of \$16,000 as of the date of
3 disbursement. The Court also hereby approves the payment of settlement
4 administration costs in the amount of \$21,432.50 to Simpluris, Inc., the
5 Settlement Administrator for services rendered in this matter. The
6 enhancement awards to the Class Representatives in an amount of \$6,000
7 per Class Representative are approved, including an unopposed amount of
8 \$6,000 to the beneficiary of recently deceased named-plaintiff Robert W.
9 Decker.

10 q. The Settlement Administrator is directed to make the foregoing payments
11 to Class Counsel, the Settlement Administrator, the LWDA, and Class
12 Representatives in accordance with the terms of the Stipulation. Those
13 payments come out of the total Qualified Settlement Fund provided for in
14 the Stipulation. After deducting the foregoing, the remaining shall
15 constitute the Net Settlement Fund, and the Settlement Administrator shall
16 distribute payments of Settlement Shares to Claimants, subject to the 33%
17 minimum distribution, pursuant to the terms of the Stipulation.

18 r. The unclaimed Settlement Shares and uncashed Settlement Share checks
19 shall revert to Earthgrains as set forth in the Stipulation.

20 s. The Defendants shall also cause to be posted in a centralized location at
21 every depot where Class Members who are still RSRs work the relevant
22 Collective Bargaining Agreement provisions pursuant to the terms of the
23 Stipulation.

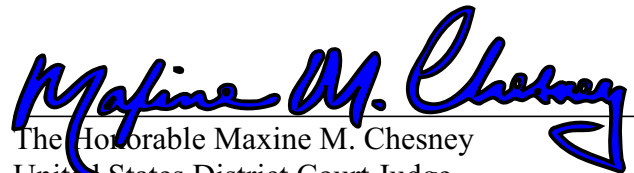
24 t. This matter is hereby dismissed with prejudice. The Court reserves and
25 retains exclusive and continuing jurisdiction over the above-captioned
26 matter, the Class Representatives, the Settlement Class, and Defendants
27 for the purposes of supervising the implementation, effectuation,
28

1 enforcement, construction, administration and interpretation of the
2 Settlement and this Judgment.

3 u. This document shall constitute a judgment for purposes of Rule 58 of the
4 Federal Rules of Civil Procedure.

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9 **IT IS SO ORDERED.**

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11 Dated: December 14, 2012

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13 The Honorable Maxine M. Chesney
14 United States District Court Judge
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